

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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SHAUNA NOEL and EMMANUELLA SENAT,

Plaintiff(s),

-against-

THE CITY OF NEW YORK,

Defendant. 15 CV 5236 (LTS)(KHP)

**DECLARATION OF FRANCES
POLIFIONE IN OPPOSITION
TO PLAINTIFFS' MOTION TO
FOR PARTIAL SUMMARY
JUDGMENT AND IN SUPPORT
OF DEFENDANT'S CROSS-
MOTION FOR SUMMARY
JUDGMENT**

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FRANCES POLIFIONE declares, pursuant to 28 U.S.C. §1746 and under penalty of perjury, that the following is true and correct:

1. I am an Assistant Corporation Counsel in the office of Zachary W. Carter, Corporation Counsel of the City of New York, attorney for Defendant CITY OF NEW YORK, in the above-captioned action. I am an attorney admitted to practice law before the courts of the State of New York and before this Court.

2. I submit this declaration in support of Defendant's cross-motion for summary judgment and in support of Defendant's opposition to Plaintiffs' motion for summary judgment.

3. A copy of the New York City Department of Housing Preservation and Development ("HPD") press release, "HPD Boosts Community Preference on Homeowners/Rental Development to Fifty Percent," dated September 4, 2002, is annexed hereto as Exhibit 1.

4. A copy of a letter from former HPD Commissioner Jerilyn Perine to Steven J. Hunt, dated November 8, 2002, is annexed hereto as Exhibit 2.

5. A copy of the Institute on Metropolitan Opportunity's¹ report, "American Neighborhood Change in the 21st Century," dated April 2019, is annexed hereto as Exhibit 3. It is also available online at: https://www.law.umn.edu/sites/law.umn.edu/files/metro-files/american_neighborhood_change_in_the_21st_century_-_full_report_-_4-1-2019.pdf.

6. A copy of an email from Margaret Brown, dated November 10, 2016, is annexed hereto as Exhibit 4.

7. A copy of an email from Robert Goldrich, dated November 10, 2016, is annexed hereto as Exhibit 5.

8. A copy of an email from Yume Kitsune, dated June 1, 2016, containing a copy of a letter from Council Member Peter Koo is annexed hereto as Exhibit 6.

9. An email from Ashley Thompson, dated March 27, 2014, is annexed hereto as Exhibit 7. The City withdraws confidentiality on this document.

10. A copy of the Progressive Caucus of the New York City Council press release, "Progressive Caucus Priorities to Strengthen MIH," dated February 4, 2016, is annexed hereto as Exhibit 8.

11. An email from Kicy Motley, dated September 25, 2014, is annexed hereto at Exhibit 9. The City withdraws confidentiality on this document.

12. A copy of a letter from Brooklyn Speaks, dated October 14, 2016, is annexed hereto as Exhibit 10.

13. A copy of a letter from Brad Lander to then HPD Commissioner Vicki Been and then Department of City Planning ("DCP") Director Carl Weisbrod, dated March 4, 2016, is annexed hereto as Exhibit 11. The City withdraws confidentiality on this document.

¹ Myron Orfield is the director of the Institute on Metropolitan Opportunity.

14. A copy of an email from Benjamin Dulchin, dated September 20, 2016, is annexed hereto as Exhibit 12.

15. A copy of an email from Benjamin Dulchin, dated September 22, 2016, is annexed hereto as Exhibit 13.

16. A copy of Citywide Alliance Against Displacement's notice for a rally against displacement at City Hall scheduled for January 16, 2017 is annexed hereto as Exhibits 14.

17. A copy of an email from Rachaele Raynoff, dated February 21, 2016, is annexed hereto as Exhibit 15. The City withdraws confidentiality on this document.

18. A copy of an email from "clips," dated April 1, 2016, forwarding the article "Wary of Gentrification, East Harlem Braces for Rapid Change," is annexed hereto as Exhibit 16.

19. An excerpt from an email from "NYCEDC News," dated October 20, 2016, forwarding a series of news articles, including "Brooklyn Lawmakers Enter Gentrification Feud Over Crown Heights Neighborhood" and "Why de Blasio's Affordable Housing Plan is in Trouble," is annexed hereto as Exhibit 17.

20. A copy of an email from Elizabeth Rohlfing, dated December 15, 2015, containing the article, "Clergy Back de Blasio's Embattled Affordable Housing Plan" is annexed hereto as Exhibit 18.

21. An email from Ester Sosa, dated November 10, 2015 is annexed hereto as Exhibit 19. The City withdraws confidentiality on this document.

22. A copy of a notice about the East New York Displacement Research project, dated August 2016, is annexed hereto as Exhibit 20.

23. A copy of a letter from Movement for Justice in El Barrio to Carl Weisbrod, director of the Department of City Planning, dated November 17, 2016, is annexed hereto as Exhibit 21. The City withdraws confidentiality on this document.

24. A copy of an email from Joe Marvilli, dated April 25, 2016, containing an excerpt of the transcript of Mayor Bill de Blasio's interview on the Brian Lehrer Show is annexed hereto as Exhibit 22.

25. A copy of HPD's notes for former HPD Commissioner Vicki Been's regrading her panel appearance at the APA Conference entitled "Crisis of Housing Affordability: Creating Housing Options and Stemming Displacement" is annexed hereto as Exhibit 23. The City withdraws confidentiality on this document.

26. A copy of a letter from New York State Assembly Member Robert Rodriguez, dated February 19, 2015, is annexed hereto as Exhibit 24.

27. A copy of an email from Joe Marvilli, dated February 25, 2016, containing the article "CityViews: Four Wrong Ideas Driving the Mayor's Housing Plan," is annexed hereto as Exhibit 25.

28. A copy of a letter from Manhattan Community Board 4, dated December 27, 2016, is annexed hereto as Exhibit 26.

29. A copy of an email from Carl Weisbrod, dated January 26, 2015, containing the article "Stronger Anti-Displacement Tools for a Re-Zoned City" is annexed hereto as Exhibit 27.

30. A copy of an email from Jordan Press, dated March 14, 2016 containing the article "City Limits: Some Suspect East New York Rezoning has Triggered Speculation" is annexed hereto as Exhibit 28.

31. A copy of an email from Daniel Hernandez, dated March 09, 2016, containing the articles “Civil Rights Groups Support de Blasio’s zoning proposals,” “Why Our Housing Plan Must Pass: Mayor de Blasio Urges the City Council and Advocates to Get Behind his Zoning Reforms,” “Williamsburg Warns East New York About Industrial-Strength Gentrification” and “Seniors Wait Years for Affordable Housing,” is annexed hereto as Exhibit 29.

32. A copy of the opinion piece by Maggie Clarke, “Opinion: Don’t Dismiss Community Concerns as ‘NIMBYism’” is annexed hereto as Exhibit 30.

33. A copy of a letter from the Bronx Coalition for a Community Vision to Carol J. Samol, Bronx Borough Chair of DPC, dated April 18, 2016, is annexed hereto as Exhibit 31.

34. An excerpt from an email from Jordan Press, dated March 7, 2016, containing the articles “In Sunset Park, a Call for ‘Innovation’ Leads to Fear of Gentrification,” “James and Crown Heights Residents Rally Against Alleged Tenant Harassment,” “Groups Against de Blasio Housing Plan Drop New Ad: ‘Affordable for Who’,” “Kakeem Jeffries Decries de Blasio’s Rezoning Plan Ahead of Council Hearing,” “As Luxury Tower Rises, Cracks in Adjacent Buildings Strengthen Gentrification Fears,” and “Assessing de Blasio: Affordable Housing” is annexed hereto as Exhibit 32. The City withdraws confidentiality on this document.

35. A copy of the HPD memorandum re: CPC review session on East New York Housing Plan, dated January 25, 2016, is annexed hereto as Exhibit 33. The City withdraws confidentiality on this document.

36. Exhibit 34 is intentionally omitted.

37. A copy of an email from Vicki Been, dated March 24, 2015, is annexed hereto as Exhibit 35.

38. A copy of an email from Eric Wilson, dated March 15, 2016 is annexed hereto as Exhibit 36.

39. Exhibit 37 is intentionally omitted.

40. Excerpts from the City Council Subcommittees for the following projects and rezonings are collectively annexed hereto as Exhibit 38.

- a. 77 Commercial Street
- b. 116 Walton
- c. Bedford Union Amory
- d. Rheingold Heights Two Corp.
- e. The Meekerman
- f. Sky Hudson Yards
- g. Soundview Partners
- h. The Robeson
- i. Seward Park
- j. Domino Sugar
- k. Hunter's Point South
- l. Sunset Park Rezoning
- m. West Harlem Rezoning
- n. East Harlem Rezoning
- o. East New York Rezoning
- p. Greenpoint Rezoning
- q. Jerome Avenue Rezoning
- r. Manhattanville
- s. Mandatory Inclusive Housing ("MIH")
- t. Markham Gardens

41. Copies of excerpts from the City Planning Commission ("CPC") reports for the Manhattanville project and the Borough President recommendation for The Meekerman project are collectively annexed hereto as Exhibit 39.

42. CPC public hearing video links for the following projects are located at (relevant timestamps are noted)

- a. Bedford Union Armory (September 19, 2017)
 - a. Part 1: <https://www.youtube.com/watch?v=t9k7s5w4TJM> timestamp: 1:45:55
 - b. Part 2: <https://www.youtube.com/watch?v=NbRyJbMLIPs> timestamps: 9:07, 29:00

- b. East Harlem Rezoning (August 23, 2017)
 - a. Part 2: <https://www.youtube.com/watch?v=MddGce4-qow>
timestamps: 40:27, 47:10, 57:09, 1:15:00, 1:16:50, 1:17:00, 1:22:00, 1:25:30, 1:31:30; 1:02:20, 1:03:48
 - b. Part 3: <https://www.youtube.com/watch?v=LYkvIPXbgTQ>
timestamps: 2:00, 4:30, 7:00, 10:25, 12:45, 31:35, 42:50, 47:00, 50:00, 51:23, 52:00, 54:40, 56:43, 57:25, 58:00, 59:20, 1:01:00, 1:03:00, 1:07:00, 1:09:00, 1:22:00
- c. East New York Rezoning (January 6, 2016)
 - a. Part 1: <https://www.youtube.com/watch?v=48kRtUs4WiU>
timestamps 1:31:50, 1:39:30, 1:59:00, 2:03:30
 - b. Part 2: <https://www.youtube.com/watch?v=iAiwgO6-5eE>
timestamps 21:12, 35:45
 - c. Part 3:
<https://www.youtube.com/watch?v=RG3mnvBy57M>
timestamps 1:07:40, 1:36:48, 1:53:25
 - d. Part 4: <https://www.youtube.com/watch?v=04dQmPIhf30>
timestamps 54:30, 57:35

43. Copies of the following presentations given by former HPD Commissioner Vicki Been are collectively annexed hereto as Exhibit 40.

- i. “Housing New York: Pairing Neighborhood Investment with Protections Against Displacement,” dated November 13, 2015. The City also withdraws confidentiality on this document.
- ii. “Gentrification, Displacement and Fair Housing: Tensions and Opportunities,” dated October 4, 2016.
- iii. “Displacement and Fear of Displacement from Gentrification,” dated December 6, 2016.

44. An excerpt of the City’s “Proposed Consolidated Plan Annual Performance Report 2012: Affirmatively Furthering Fair Housing Statement” is annexed hereto as Exhibit 41.

45. Excerpts from the transcript of the deposition of Shauna Noel on January 11, 2018 are annexed hereto as Exhibit 42.

46. Excerpts from the transcript of the deposition of Emmanuella Senat on July 30, 2018 are annexed hereto as Exhibit 43.

47. A copy of Dr. Andrew Beveridge's rebuttal report to the expert report of Edward Goetz, amended on October 18, 2019 is annexed hereto as Exhibit 44.

48. Excerpts from the deposition of Andrew Beveridge dated September 24, 2019 are annexed hereto as Exhibit 45.

49. A copy of Dr. Andrew Beveridge's expert report, amended October 18, 2019, is annexed hereto as Exhibit 46.

50. A copy of Dr. Andrew Beveridge's reply to Dr. Bernard Siskin's rebuttal report, amended on October 27, 2019, is annexed hereto as Exhibit 47.

51. A copy of Dr. Andrew Beveridge's FRCP 26(e) update, dated January 22, 2020, is annexed hereto as Exhibit 48.

52. A copy of Myron Orfield's "expert report" is attached to the accompanying Daubert motion, filed by Gati J. Dalal (ECF 893-895). The report is filed at ECF 894-1.

53. Excerpts from the deposition of Mryon Orfield dated April 17, 2019 are annexed hereto as Exhibit 49.

54. Excerpts from the deposition of Edward Goetz, dated April 5, 2019, are annexed hereto as Exhibit 50.

55. An excerpt of the Stipulation, dated August 3, 2018, is annexed hereto as Exhibit 51.

56. An excerpt of Defendant's Amended Responses to Plaintiffs' Requests to Admit, dated October 2, 2019, is annexed hereto as Exhibit 52.

57. Excerpts from the deposition of Deputy Commissioner of the Office of Neighborhood Strategies and the Division of Tenant Resources, Leila Bozorg, dated April 19, 2019, are annexed hereto as Exhibit 53.

58. Excerpts from the deposition of former HPD Commissioner Jerilyn Perine, dated October 26, 2017, are annexed hereto as Exhibit 54.

59. Excerpts from the deposition of former HPD Commissioner Shaun Donovan dated June 1, 2018 are annexed hereto as Exhibit 55.

60. Excerpts from the deposition of former HPD Commissioner Vicki Been, dated April 10, 2018 are annexed hereto as Exhibit 56.

61. Excerpts from the deposition of former DCP Executive Director Purnima Kapur, dated April 19, 2019, are annexed hereto as Exhibit 57.

62. The Where We Live NYC (“WWL”) Draft Plan can be accessed at: <https://wherewelive.cityofnewyork.us/wp-content/uploads/2020/02/Where-We-Live-NYC-Draft-Plan.pdf> (last accessed August 13, 2020).

63. WWL Community Conversations can be accessed at: https://wherewelive.cityofnewyork.us/wp-content/uploads/2019/12/WWL_ComomunityConversations_ReportBack.pdf (last accessed August 13, 2020).

64. Housing New York (“HNY”) is available at: http://www.nyc.gov/html/housing/assets/downloads/pdf/housing_plan.pdf (last accessed August 13, 2020).

65. Housing New York 2.0 is available at: <https://www1.nyc.gov/assets/hpd/downloads/pdfs/about/housing-new-york-2-0.pdf> (last accessed August 13, 2020).

66. Information and updates about OneNYC 2050 is available at: <https://onenyc.cityofnewyork.us/> (last accessed August 14, 2020).

67. The City produced over 27,000 documents to Plaintiffs.

68. There were 23 fact depositions from 21 city witnesses taken in this case.

69. During discovery, the City searched for documents from some custodians dating as far back as Jan. 1 2002, and for the majority of the custodians from Jan. 1, 2010.

70. Professor Myron Orfield based his opinions on 16 documents and 8 depositions excerpts. See report generally ECF 894-1

Dated: New York, New York
August 14, 2020

s/

FRANCES POLIFIONE
Assistant Corporation Counsel

